
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
RIVER LANDINGS, INC.) Chapter 11 Case
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) Number 94-41152
 Debtor)
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NATIONWIDE MORTGAGE)
SERVICES, INC.)
)
 Movant)
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)
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v.)
)
RIVER LANDINGS, INC.)
)
 Respondent)

MEMORANDUM AND ORDER
ON MOTION FOR RELIEF FROM STAY

Debtor's case was filed July 5, 1994. On December 22, 1994, Movant filed a Motion for Relief from the Automatic Stay and a hearing was scheduled for January 26, 1995. After considering the evidence and applicable authorities I conclude that the Motion

should be granted.

FINDINGS OF FACT

_____ Debtor's Chapter 11 case represents an effort to reorganize a corporation whose sole business activity is the ownership, management and development efforts relating to a proposed single family subdivision known as The Moorings located in Chatham County, Georgia. The property includes approximately 37 acres of high ground which has been subdivided into 40 single family residential lots. In addition, the Debtor owns ten acres of high ground hammocks located adjacent to the mainland property, but separated by several hundred feet of marshlands. The hammocks are not at the present accessible from the mainland part of the proposed subdivision.

Debtor is obligated to the Movant in the amount of \$767,837.75, which obligation is secured by a first priority security deed in the property. Secured claims total approximately \$1,084,000.00. While Debtor's counsel argued that some of those claims are disputed, at present none have been disallowed or reduced. The total of the Movant's mortgage and that held by a non-moving party secured by this development was \$1,017,837.75, as of the day of filing. The loan extended by Movant was closed in January of 1994 and, other than interest payments which were escrowed at closing, only one and one-half interest installments due after the closing have been made.

The record in this case reveals that as of the date of the filing, from the testimony elicited at the 341 Meeting, the Debtor had no cash reserves and its operations were being funded entirely by one Kenneth McDaniel, apparently a principal in the Debtor/Corporation. The Debtor has not filed a disclosure statement nor filed a plan of reorganization. Debtor's original counsel withdrew citing Debtor's failure to cooperate with her in the formulation of a disclosure statement and plan, and as of the date of the hearing the Debtor was not current in its filing of the periodic reports required to be filed with the Office of the United States Trustee. Reports were filed for September, October, November and December 1994 on January 31, 1995. The January 1995 report is not yet due.

Much of the testimony at the hearing was devoted to efforts to determine the fair market value of this property. Jerome Ney, witness for the Movant, estimated a gross sales price for the property of \$1,537,500.00, less six percent real estate commission and estimated taxes leaving a gross sales price of \$1,439,000.00. Mr. Ney did not further adjust the gross sales price of the property because he had no idea what development costs and other costs of carrying the project might be incurred. He also noted that current contracts for proposed sale of lots in the subdivision carry a ten percent rather than a six percent real estate commission. He applied a capitalization rate of nine percent and discounted the gross sales price to present day value on an assumed eight-year sellout of five lots per year, arriving at an estimate of the project's value of \$722,500.00. He allocated no value to the approximate ten acres of hammock land because there is no way to estimate

what the cost of building a bridge or causeway to connect the hammocks to the high ground will be and it is impossible at this point to determine what proportion of that ten acres would actually be developable land once the wetlands regulations of the United States Army Corps of Engineers are complied with.

The Debtor submitted the testimony of Danny McIntosh, a local realtor who has listed lots in the subdivision for sale and in fact has submitted contracts on four of the lots to the Court for approval. Mr. McIntosh has previous experience in dealings with property in The Moorings, having attempted to sell lots in behalf of another developer. He concluded that while the average price of lots for which contracts have been received total \$25,750.00 per lot, within six months he expects it will be possible to increase the average sale price of lots approximately forty percent. He conceded that the early sales are being substantially discounted in order to generate some interest in the property and improve its image and visibility in the market. Based on his projection that the price per lot can be increased within six months to about \$36,000.00 per lot, he projected the value of the property to be \$1,440,000.00 and believes that the entire project can be sold out within eighteen months. He did not testify as to an appropriate capitalization rate nor did he reduce his estimated value to present day value to take into account the eighteen month delay in sales. Obviously that figure would be reduced, even under his analysis, by some ten to fifteen percent and I therefore conclude that the net effect of his testimony as the value of the property is \$1,300,000.00.

Clearly while the gross sales price of the two appraisers was relatively close, the present day value of the project differs substantially because of the estimated holding periods. Mr. Ney values the prime marshfront lots in this development at \$65,000.00 and yet two of the contracts that are in hand and are to be presented to the Court propose sale of these lots for \$30,000.00 and \$33,000.00 respectively. While discounting of the price to generate faster land sales will shorten the holding period and may result in exactly the same present day value as higher sales at a slower rate, I find that Mr. McIntosh has not adequately demonstrated that this project can be sold out entirely in a period of eighteen months at an average per lot price of \$36,000.00. Certainly if the prime lots are being offered at \$30,000.00 and \$33,000.00, there is no way to achieve a \$36,000.00 price per lot on an average, and Mr. McIntosh provided no basis on which I can conclude that an eighteen-month sales period will in fact be sufficiently long to permit prices to be increased by an amount necessary to achieve that per lot sales price. To the contrary, Mr. Ney, while he did not articulate at length why he believed an eight-year period would be necessary to market this property, did testify as to his familiarity with comparable subdivisions in the relevant market which he has observed and from which he apparently concluded that the eight year sell out would be required in order to achieve the price levels he used. I therefore conclude, for the purposes of this Motion, that present day value of this property is \$722,500.00. Based on this finding I conclude that Movant has met its burden under 11 U.S.C. Section 362(g)(1).

At the hearing, no witness other than the appraiser was called to testify on behalf of the Debtor and no representative of the corporate debtor made any appearance in Court. As a result there was no evidence offered by the Debtor to sustain its burden under 11 U.S.C. Section 362(g)(2). Debtor's counsel argued forcefully that this property is necessary to the Debtor's effective reorganization and the Court might indeed infer, because this is a single-asset real estate debtor, that maintaining possession and the opportunity to develop this real estate is necessary to the Debtor. However, I have concluded that the Debtor has failed to carry its burden on this point. Debtor's representative at the creditor's meeting testified that the Debtor had no cash reserves. Cash on hand in September, October and November was reported to be zero. The latest operating report dated December 31, 1994, shows \$2,465.00 cash on hand, states that "the Debtor has no income," and reveals that cash receipts have come from a third-party source who intends his investment to gain for him "an interest in the reorganized debtor." This arrangement for the infusion of cash has not been approved by this Court.

Because of the lack of a witness at the hearing on this matter, the Debtor was unable to offer evidence that it can protect the creditor's interest in this case pending the completion of development efforts and during the period of time in which the property will be marketed. There was no testimony that the Debtor had the wherewithal to fund any accruing interest, to pay accruing tax obligations, to maintain insurance, or indeed to complete the infrastructure and improvements necessary to properly market this property.

As the Supreme Court held in the Timbers case, it is not sufficient for a debtor to simply allege that in order for the debtor to have any hope of reorganization, no matter how remote, that it is necessary for it to retain the subject property. Rather it is required of the Debtor to demonstrate that there is a reasonable prospect of successful rehabilitation within a reasonable time. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Association, Ltd., 484 U.S. 365, 375-76, 108 S.Ct. 626, 633, 98 L.Ed 2d 740 (1988). This case has been pending for almost seven months without the Debtor showing any seriousness of purpose in fulfilling its obligations to file monthly operating reports, a disclosure statement or a plan, or even to show up to offer testimony in order to preserve its only asset at the hearing held on January 26. Given this lack of participation and apparent lack of any sense of urgency to fulfill its obligations, I am forced to conclude that the Debtor did not attempt to make such a showing because in good faith it did not have the capability to back its promises up with deeds. Accordingly, because I have found that there is no equity in this property and because the Debtor has failed to introduce any proof that this property is necessary to an effective reorganization, the Motion is granted.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1995.